



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: LIN 02 006 55026

OFFICE: NEBRASKA SERVICE CENTER

DATE: JAN 02 2003

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 USC 110(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the nonimmigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a television station with 30 employees, and an unspecified gross annual income. It seeks to employ the beneficiary for three years as its Marketing Coordinator.

The director denied the petition finding that the proffered position is not a specialty occupation. On appeal, the petitioner asserts that the position is, in fact, a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), provides in part for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical knowledge application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

8 C.F.R. 214.2(h)(4)(ii) further defines the term "specialty occupation" as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

In the initial petition, the petitioner referred to an accompanying letter for a description of the duties of the proffered position. In that letter, the station's General Manager stated:

██████████ is being offered a temporary position in the capacity of Marketing Coordinator. Specifically, ██████████ ██████████ will be responsible for maintaining a

comprehensive file on the market including competitive advertising media. He will maintain updated information on audience demographic composition. [REDACTED] will organize and implement sales policies. He will develop an account list and maintain cordial relationships with clients. He will develop sales promotions and special packages to clients. [REDACTED] will represent KMAS Telemundo at local events. He will assist Special Events Coordinator with the execution of special events.

The documentation submitted with the petition was insufficient to demonstrate that the proffered position is a specialty occupation. Therefore, the director issued a Request for Evidence offering the petitioner an opportunity to submit additional evidence pertinent to the proffered position. The director specifically requested that the petitioner submit a description of the actual day-to-day duties of the proffered position and list the percentage of time the beneficiary would spend on each of those duties.

In his reply, the petitioner did not submit the requested list of the day-to-day duties of the position nor did the petitioner state the percentage of time to be spent on each of the duties of the position. Instead, the petitioner provided a copy of another employee's degree in commerce, apparently as evidence that the firm has hired individuals with degrees in the past.

In addition, the petitioner submitted a letter from an Associate Professor of Marketing at Seattle Pacific University. That letter stated that the described duties of the proffered position were consistent with the position of a Marketing Manager, and that such a position would require a bachelor's degree in business administration with a specialty in marketing or a related field. Finally, the petitioner provided a printout of a job listing for a Marketing/Promotions Coordinator for an architectural firm.

The director denied the petition on the basis that the duties of the position, as described by the petitioner, are primarily sales and public relations. The director noted that such positions do not require a bachelor's degree in a specific specialty.

On appeal, counsel notes that the U.S. Department of Labor's (DOL) Occupational Outlook Handbook (Handbook) states that "for Marketing, Sales, and Promotion Management positions, some employers prefer a Bachelor's or Master's Degree in Business Administration, with an emphasis on Marketing." Counsel contends that this statement indicates that, for a position parallel to the proffered position, employers require degrees in Business Administration with an emphasis on marketing. Counsel contends, therefore, that the proffered position has been demonstrated to be a specialty occupation.

Section 101(a) (15) (H) (i) (b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a) (15) (H) (i) (b), provides in part for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Pursuant to 8 C.F.R. 214.2(h) (4) (iii) (A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Counsel does not present a persuasive argument for classifying the proffered position as a specialty occupation. In evaluating whether the proffered position is a specialty occupation, each of the four criteria listed at 8 C.F.R. 214.2(h) (4) (iii) (A) will be considered separately below.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. 8 C.F.R. 214.2(h) (4) (iii) (A) (i).

The Service often looks to the U.S. Department of Labor's (DOL) Occupational Outlook Handbook (Handbook) when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position.

Initially, however, the issue to be addressed is whether the proffered position is a Marketing Management position or some other type of position. In the denial letter, the director stated that the duties of the proffered position, as described by the station manager, are sales and public relations duties. On appeal, counsel urges that the description of the position clearly shows that it "involves marketing" and that the beneficiary "will perform management functions and complex market analysis"

In support of this position, the beneficiary cited the letter, described above, from an Associate Professor of Marketing. That letter states that the proffered position:

Require(s) theoretical knowledge and practical application of specialized knowledge about (sic) market analysis, planning and execution of marketing and sales strategies, trade/customer relations, and the supervision of personnel.

However, the description of the duties of the proffered position does not demonstrate that the proffered position requires any such specialized knowledge. Maintaining files on the market, including the station's competition and the demographics of the audience, is within the ambit of duties of sales personnel, as is maintaining an account list and maintaining cordial relationships with clients. The station manager stated that the beneficiary would "develop sales promotions and special packages to clients." Although the meaning of that phrase is not clear, the writer may have meant that the beneficiary would offer special promotional rates for advertising services to promote the interests of the station. This, too, is manifestly within the ambit of the usual duties of sales personnel, as is acting as a representative of the station at local events.

The station manager further stated that the beneficiary would assist the Special Events Coordinator in executing special events. The nature of those special events is unclear, but no reason exists to find that duty inconsistent with a sales position. Finally, that the beneficiary would organize and implement sales policies suggests that the beneficiary would supervise other sales personnel, although that is not explicitly stated.

From the description of the duties of the proffered position, the primary duty appears to be to sell advertising. The other duties described by the station manager appear to be in support of that primary function. The applicant's position appears, then, to be that of an Advertising Sales Agent. Alternatively, the position might be that of a Sales Manager, if the position entails managing other Sales Agents. Because the petitioner has not, in the petition, in response to the request for evidence, or on appeal, made clear whether the duties of the proffered position include managing sales agents, the position shall be evaluated as an Advertising Sales Agent position, rather than as a Sales Manager position. In the 2002 - 2003 edition of the Handbook at page 598, the position of Advertising Sales Agent is described, but not studied in detail. The educational requirements of the position are not stated.

The position of Sales Representatives in Wholesale and Manufacturing industries is analogous to that of Advertising Sales

Agent, and is explored in the Handbook in more depth. As to those positions, the Handbook observes, at page 369, that the background needed for sales jobs varies by product line and market, and that, although a bachelor's degree is increasingly preferred, many employers hire experienced sales personnel without degrees. This passage indicates that a bachelor's degree is not prerequisite to an entry-level position as a Sales Representative. Demonstrating that the duties of the proffered position are more demanding and, therefore, necessitate more stringent educational requirements is the petitioner's burden. Nothing in the record or in the Handbook, however, indicates that the proffered position exacts more education than other, ostensibly similar, sales positions.

II. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree. 8 C.F.R. 214.2(h)(4)(iii)(A)(2).

Factors often considered by the Service when determining the industry standard include: whether the DOL's Handbook reports that the industry requires a degree, whether the industry's professional association has made a degree a minimum entry requirement, and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." Shanti, Inc. v. Reno, 36 F.Supp.2d 1151, 1165 (D. Minn. 1999) (quoting Hird/Blaker Corp. v. Slattery, 764 F.Supp.2d 872, 1102 (S.D.N.Y. 1991)).

The conclusions drawn from the DOL's Handbook pertinent to a degree requirement for an Advertising Sales Agent position were discussed in the previous section, and shall not be repeated here. Neither counsel nor the petitioner presented any evidence that any association of Advertising Sales Agents has instituted a degree requirement for membership.

Nothing in the description of the proffered position indicates that the petitioner's business is especially complex or unique, such that it would require a baccalaureate degree in a specialized field of study.

III. The employer normally requires a degree or its equivalent for the position.

In response to the Request for Evidence, the petitioner submitted another employee's college transcripts. Nothing in the record, however, demonstrates that this other employee performs the same duties as those which would be required of the beneficiary in the proffered position, or that the other employee's foreign degree is equivalent to a U.S. bachelor's degree in a specific specialty.

The petitioner presented no evidence that previous Advertising Sales Agents have held bachelor's degrees in a specific specialty, and no other evidence that it normally requires a degree or its equivalent for the proffered position. That the petitioner would prefer to hire applicants with specialized degrees is understandable, but the petitioner has not shown that a degree has been, and continues to be, required.

IV. The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. 8 C.F.R. 214.2(h)(4)(iii)(A)4.

The record contains no evidence that the proffered position encompasses specialized and complex duties that can only be performed by an individual who has attained a baccalaureate or higher degree.

Based upon the evidence in the record, the petitioner has not established that the proffered position is a specialty occupation. The critical element is not the title of the position but, rather, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as a minimum for entry in the occupation as required by the Act. In this case, the petitioner has not shown that the practice of the proffered position requires the attainment of a bachelor's degree in a specific specialty.

The burden of proof in these proceedings rests solely on the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.